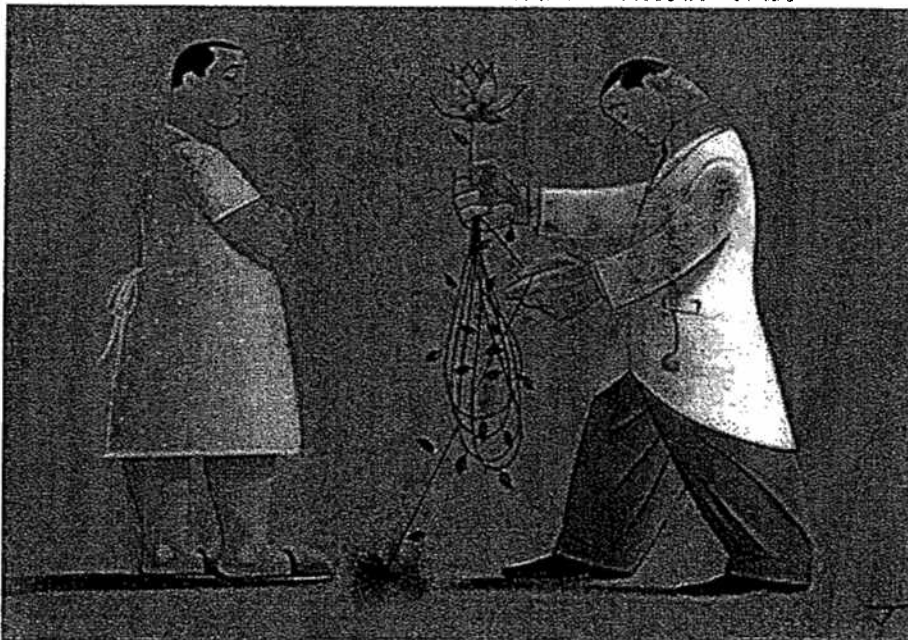
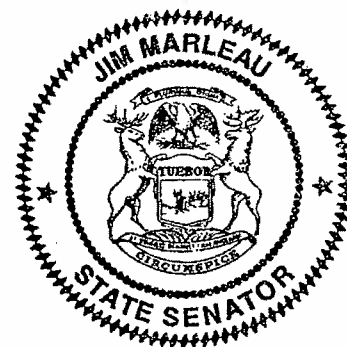


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"I'm sorry": Why is that so hard for doctors to say?

Concerns about medical liability, insurance coverage and a lack of training for doctors mean an apology after medical errors is the exception.

By KEVIN B. O'REILLY, amednews staff. Posted Feb. 1, 2010.

When you hurt someone, saying "sorry" may seem like the least you can do. But when the hurt occurs in the medical arena, offering an apology is not so easy.

Thirty-five states have laws offering some kind of legal protection for physicians who express regret or empathy to patients who experience an adverse event. But laws vary in what they protect from admissibility in court. Most insurers discourage doctors from apologizing for fear it could hurt them in court, and lawyers often advise against it.

Hospitals are required to tell patients about serious mistakes. But it is unclear to what extent disclosure policies are followed, and these disclosures may not be accompanied by apologies.

More than a decade since studies first showed that openness and apology might work, "I'm sorry" is still rarely uttered in medicine. Indeed, it has been more than two decades since the Lexington Veterans Affairs Medical Center in Kentucky decided to change how it reacted in the aftermath of adverse events.

American Medical Association ethical opinion states that when a doctor errs, "the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred" and that liability concerns should not impede disclosure. The AMA favors traditional tort reforms such as damage caps, but also supports testing alternatives, for which the Dept. of Health and Human Services has set aside \$25 million.

Douglas B. Wojcieszak is founder of the Sorry Works! Coalition, which promotes the apology, disclosure and compensation concept among physicians, insurers and hospitals, and offers training. Wojcieszak estimates that 5% to 10% of hospitals nationally are taking the "I'm sorry" approach. But, he said, many decline to publicize that for fear of drawing attention from trial lawyers.

"There are a lot more hospitals and health care organizations, medical practices and long-term-care facilities that are doing this, but they are just doing it quietly. We're still at the early adopter stage," said Wojcieszak, who funds Sorry Works through speaking and consulting fees. He said he came to the field after he lost a brother to a medical error in 1998.

Rick Boothman is chief risk officer at the University of Michigan Health System, one of the early adopters. He said the reason other doctors and hospitals have been slow to say "I'm sorry" is simple.

"What holds us back is fear, and you can't quantify it," Boothman said. "Those fears are not the result of bad experiences -- they're the result of people who've never tried it."

The change has been frustratingly slow, said Michael S. Woods, MD, CEO of Civility Mutual Educational Services, which offers training on apology and disclosure.

"This is something that's been on the radar now for 10 years, and we aren't seeing huge changes," said Dr. Woods, author of *Healing Words: The Power of Apology in Medicine*. "There are pockets where there's incredible success. But if we had the same evidence for a new diabetes treatment that we have for the success of apology and truth-telling, people would go out and change their treatment of diabetes tomorrow. That's how compelling the data are."

Legal, insurance barriers

Physicians may have good reasons to steer clear of apologizing, some lawyers say.

"If [the apology] becomes an admission that's usable in a malpractice case, it could affect the ability to defend the case," said Steven I. Kern, a senior partner at Kern Augustine Conroy & Schoppmann, a Bridgewater, N.J.-based law firm that specializes in representing physicians. "Most insurance companies say that if you as the insured do something that affects our ability to defend the case, we're not going to cover it. Going out and saying 'I'm sorry' not only is going to adversely impact any ability to defend the case, but may well relieve you of that insurance coverage."

David Harlow, a health lawyer in the Boston area, said doctors nationally are contractually required to notify their liability insurers of potential claims. Taking a more active approach, including apologizing when appropriate, could help avoid court, he said.

least, people are hearing some part of the message that this is OK to do and good to think about, and you'll see that snowball start to go faster."